

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 461

Case No. 461
UP File 900049

Parties to Dispute: Brotherhood of Maintenance of Way Employees
and
Union Pacific Railroad
(Former Missouri Pacific Railroad Company)

Statement

of Claim: Claim on Track Foreman P. A. Kinney, SSN 492-60-8494, for eight (8) hours each work day at the straight time rate of pay, any overtime and holiday pay and any additional expense incurred by the Claimant that would normally be provided by Carrier health and welfare benefits; claim beginning September 29, 1989 and continuing until all charges are removed from Claimant's personnel record and he is reinstated to service with all rights unimpaired.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board therefor.

Claimant, as the result of a formal investigation held on December 19, 1989, at Rock Creek Parkway, North Kansas City, Missouri, on the charge of being excessively absent from duty without proper authority on October 4, 6, 11, 16 and 17, 1989 and for sleeping while on duty November 15, 1989 and for being quarrelsome with his Foreman on November 17, 1989, in violation of specific rules. As a result thereof, Carrier concluded him culpable and dismissed him from its service as discipline therefor.

Claimant was accorded the due process to which entitled under Rule 12 - Discipline.

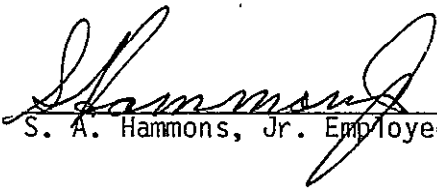
There was sufficient evidence adduced, including the admissions against interest by the Claimant, to support Carrier's conclusion that he was culpable.

The conflict in testimony was properly resolved by the hearing officer. In the absence of a showing that the hearing officer had abused his right to judge the credibility of witnesses such protest must fall. The Carrier was not shown to have been arbitrary or capricious in its conclusions.

It is noted that the Claimant's peers, apparently, had his proclivities up to their proverbial ears because they are the ones that turned him in for sleeping while on duty

on November 15. Claimant's admission that he was absent without authority on the dates in question and that he was asleep while on duty to at least 2:30 AM on November 15 was corroborated by two trackmen witnesses. Counseling on four separate occasions as to excessive absenteeism, failure to perform his duties and failure to protect his assignment, prove to be of little assistance to change this Claimant. Carrier need not be burdened with an employee of this type. On this record the discipline is deemed reasonable. This claim will be denied.

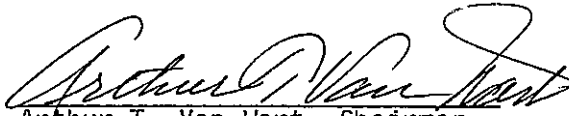
Award: Claim denied.



S. A. Hammons, Jr. Employee Member



D. A. Ring, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued December 19, 1990.